



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR JUSTICE AND CONSUMERS

The Director-General

Brussels  
JUST.H.002

Applicant: MARION, Tatjana  
Address: Maistrova ulica 1, 1270 Litija, Slovenia

Dear Ms Marion,

**Subject: Your application for access to documents – Ref EASE No 2023/1882**

We refer to your request for access to European Commission documents of 27 March 2023, which was registered on 28 March 2023 under the above mentioned reference number.

You request access to *‘the complaint and all the documents related to it, including but not limited to correspondence (email and letters), audio communication, and letters of formal notice, pertaining to the following CHAP case and EU Pilot cases:*

- 1. CHAP(2020)00477;
- 2. EUP(2020)9683;
- 3. EUP(2020)9764.

You are requesting access to *‘the documents that include communication between:*

- *the claimant and the European Commission and EU bodies;*
- *the European Commission and EU bodies and the respective government and its bodies (ministries, courts) and;*
- *the European Commission and EU bodies and experts involved in the case’.*

You are also asking for *‘interim or final reports by the European Commission and EU bodies’ ‘in relation to the above mentioned CHAP case and EU Pilot cases’.*

I consider your request to cover documents held up to the date of your initial application, 27 March 2023.

A list of documents identified to be concerned by your application is to be found in Annex I.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application

cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The documents which you seek to obtain relates to ongoing investigations regarding possible infringements of EU law under the EU Pilot procedures EUP(2020)9683 and EUP(2020)9764. The EU Pilot procedure constitutes a cooperation procedure between the European Commission services and the Member States which makes it possible to ascertain whether EU law has been complied with and correctly applied within those States. It seeks efficiently to resolve any infringements of EU law by avoiding, so far as possible, the formal opening of an infringement procedure under Article 258 of the Treaty on the Functioning of the European Union. The function of the EU Pilot procedure is therefore to prepare or avoid a procedure for failure to fulfil obligations against a Member State<sup>1</sup>.

Article 4(2) third indent of Regulation (EC)1049/2001 provides that “The institutions shall refuse access to document where disclosure would undermine the protection of: (...) the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.”.

Disclosure of the documents requested would undermine the protection of the purpose of the ongoing investigations; indeed, disclosure of the documents at this point in time would affect the climate of mutual trust between the authorities of the Member States and the European Commission, which is required to resolve the cases without having to refer it to the Court of Justice. Therefore, the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001 applies to these documents.

Furthermore, Article 4(3), first subparagraph of Regulation (EC)1049/2001 provides that “Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.”

Disclosure of the documents requested would undermine the decision-making process of the Commission in relation to the two EU Pilot procedures: EUP(2020)9683 and EUP(2020)9764, as it would give access to confidential documents provided by complainants and the Member State and will affect the relationship of trust between the complainants, Member States and the European Commission.

We have considered whether partial access could be granted to the documents requested. However, since they provide for description of alleged facts and legal analysis that constitute an integrated entirety, they are entirely covered by the above-mentioned exception.

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. Please note that we have also examined whether there could be an overriding public interest in disclosure in the present case, but we you have not been able to identify such an interest.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

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<sup>1</sup> Judgment of the Court of Justice of 11 May 2017 in case C-562/14 P, *Sweden and Spirlea v Commission*, paragraphs 38 and 39.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission  
Secretariat-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Bruxelles

Or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu).

Yours faithfully,

Ana Gallego  
Director-General

Enclosure : Annex I: The list of concerned documents

Annex 1: The list of concerned documents:

The list of documents pertaining to **CHAP(2020)00477** identified to be concerned:

<b>Document title</b>	<b>Document date</b>
- The complaint registered under the reference CHAP(2020)00477.	14 February 2020
- Email from the DG JUST to the complainant regarding the authorization to disclose the content of the complaint registered under CHAP(2020)00477.	3 November 2020
- Email from the complainant to the DG JUST regarding the answer to the previous email of 3 November 2020.	5 November 2020
- CHAP(2020)00477 - Info of complainant about EU-Pilot case (2020)9764- Letter from the DG JUST to the complainant regarding the EU-Pilot application under the reference EUP(2020)9764.	14 December 2020
- CHAP(2020)00477 – incoming supporting documents	21 February 2021
- Email from the complainant to the DG JUST regarding a request for an update with regard to the status of the complaint.	21 September 2021
- Email from complainant- Request for update	27 February 2023

The list of documents pertaining to **EUP(2020)9764** identified to be concerned:

<b>Document title</b>	<b>Document date</b>
- Complaint CHAP (2020)00477	14 February 2020
- EUP(2020)9764 letter from DG JUST 30NOV2020 EN.doc;  - EUP(2020)9764 letter from DG JUST 30NOV2020 SL.doc.	30 November 2020
- Slovenia's reply to letter from DG JUST	4 February 2021

The list of documents pertaining to **EUP(2020)9683** identified to be concerned:

<b>Document title</b>	<b>Document date</b>
- Observations in case C-212-20 sent from DG JUST to the Legal Service	12 August 2020
- Letter from the European Commission to the Polish authorities in case EUP(2020)9683	22 September 2020
- Reply from the Commission to complainants in several cases informing about EUP(2020)9683	14 October 2020
- Reply from Polish authorities in case EUP(2020)9683	1 December 2020
- Reply to a request for access to documents	4 January 2021
- Email from the complainant enquiring about the case EUP(2020)9683	5 January 2021
- Flash report from a meeting with a complainant concerning case EUP(2020)9683	18 January 2021
- Email from the complainant: a follow-up from a meeting about the EUP(2020)9683	5 May 2021
- Reply from the Commission to an email registered as Ares(2021)3008344	7 May 2021
- Email from a complainant requesting an update on case EUP(2020)9683	1 September 2021

